October 26, 2023

Mr. John Podesta
Senior Advisor to the President for Clean Energy Innovation and Implementation
White House

The Honorable Wally Adeyemo
Deputy Secretary of the Treasury
Department of the Treasury

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury

Mr. Seth Hanlon
Deputy Assistant Secretary for Tax and Climate Policy
Department of the Treasury

Dear Mr. Podesta, Deputy Secretary Adeyemo, Assistant Secretary Batchelder, and Mr. Hanlon:

We are a group of state and national consumer advocates who represent the interests of energy customers across the country, and we are writing to you concerning the Inflation Reduction Act's (IRA) section 45V clean hydrogen production tax credits, for which you are currently preparing guidance.

We are deeply concerned about the potential negative impacts of weak Treasury guidelines on electricity consumers, and therefore urge you to require that all electrolytic hydrogen production seeking the 45V credit comply with the three pillars of 1) additionality, 2) deliverability, and 3) hourly matching. Those guardrails are necessary to protect U.S. households from shouldering the system costs of hydrogen production. We also urge Treasury to consult with the North American Electric Reliability Council (NERC), Regional Transmission Organizations (RTOs) and the Federal Energy Regulatory Commission (FERC) about the negative impacts a weak rule would have on power market reliability and just and reasonable rates.

Our communication is especially timely given the announcement from President Biden last week of hydrogen hubs in several of our states that will catalyze the deployment of electrolytic hydrogen projects powered by our states' electricity grids. We are deeply concerned about the impacts of this incoming hydrogen production on electricity rates.

Environmental groups, industry groups and academics have already made strong climate and business arguments regarding the need for Treasury's guidance to require the three pillars for all electrolytic hydrogen projects. We agree with their well-substantiated arguments that the three pillars are necessary to avoid significant emissions increases on the grid and adhere to the IRA's statutory requirements. The three pillars will also support robust industry growth.

In addition to those arguments, we want to draw your attention to the implications of weak 45V rules on electricity customers. We define weak rules as those that jettison one or more of the pillars or allow for the harmful grandfathering of projects under weak rules.

Not requiring additionality would allow power-hungry electrolyzers to add substantial new demand on the grid and divert large amounts of existing clean electricity that is already powering our homes to hydrogen production. This risk equally applies to grid-connected electrolyzers that purchase credits and those that directly divert power from co-located existing clean generators. Annual matching would allow hydrogen project operators to scoop up and cannibalize the lowest cost clean energy resources for hydrogen production, that would have otherwise gone to powering households with low cost, clean energy. **The occurrence of either of those impacts will increase electricity prices for customers and would be a completely unacceptable and deeply concerning outcome.** Furthermore, the complete free pass that could be offered to hydrogen producers by not requiring additionality and allowing the diversion of existing clean power with impunity runs counter to the electricity sector's recent focus on shoring up reliability and building out the grid to meet expected demand growth linked to increased electrification.

A study by Princeton University's ZERO Lab found that lax Treasury guidance allowing electrolyzers to operate on the grid with minimal constraints – i.e., without the three pillars -- would increase power prices in California by 8% and Colorado by 10% compared with cases where the three pillars are required. On-the-ground buildout may far exceed the levels assumed by the Princeton study, causing even higher price spikes absent strong 45V rules. It is fundamentally unfair to shift the costs of subsidized hydrogen production onto ratepayers, especially when hydrogen producers are receiving an extremely lucrative tax credit that can handily cover any premium associated with complying with the three pillars.

Looking further afield, the potential impact on the grid and power prices was a serious concern for the European Commission in determining rules for hydrogen production. A study by TU Berlin in Europe found a 43% increase in power prices with weak hydrogen production rules. The EU formally adopted the three pillars earlier this year in their hydrogen delegated acts.

A helpful parallel can be seen in the rise of crypto-mining and its price, reliability, and emissions impacts, where the costs of power-hungry crypto-mining are already being socialized onto ratepayers. A Berkeley study found that cryptocurrency mining operations in upstate New York have pushed up annual electric bills by about $165 million for small businesses and $79 million for individuals. In Texas, a bitcoin miner was recently paid more than $30 million of public money to cut energy usage during a heat wave. While hydrogen could offer more societal benefit than cryptocurrency, crypto mining offers a powerful precedent that underscores the importance of tight rules for power-hungry projects.

The three pillars would ensure that publicly subsidized hydrogen projects are mindful of their impacts on the grid, and of the source, time and location of the electricity powering them; this will ensure that they comply with the IRA emissions thresholds and that their production costs are not socialized across electricity customers.

The climate movement, along with clean energy companies and environmentally conscious policymakers, have made enormous progress to bring low-cost clean electricity to families and businesses. Hydrogen production subject to minimal constraints and weak rules threatens to undermine this progress. We therefore urge you to require the three pillars for all electrolytic hydrogen projects in the forthcoming 45V guidance, to protect our energy consumers, our grid, and the planet.

Yours sincerely,

Alliance for Affordable Energy (Louisiana)

California Public Interest Research Group

Citizens Action Council (Indiana)

Consumer Reports

Illinois Public Interest Research Group

Maryland Office of People's Counsel

Maryland Public Interest Research Group

National Consumer Action Foundation

National Consumer Law Center, on behalf of our low income clients

New Jersey Public Interest Research Group

Oregon Citizens Utility Board

Pennsylvania Public Interest Research Group

Pennsylvania Utility Law Project (PULP)

Public Citizen

Texas Public Interest Research Group

The Utility Reform Network (TURN)

United States Public Interest Research Group

CC:

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